

City Council
Atlanta, Georgia

08- 0 -1263

AN ORDINANCE

Z-06-79

BY: ZONING COMMITTEE

Date Filed: 7-10-06 (original)

Remanded back by Fulton County Superior Court February 19, 2008

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1. That the Zoning Ordinance of the City of Atlanta be amended, and the maps established in connection therewith be changed so that the following property located at **987 Myrtle Street, N.E.**, be changed from R-5 (Two-family Residential) District to the RG-3 (Residential General-Sector 3) District,, to wit:

ALL THAT TRACT or parcel of land lying and being Land Lot 106, 17th District, Fulton County, Georgia being more particularly described by the attached legal description and/or survey.

SECTION 2. If this amendment is approved under the provisions of Section 16-02.003 of the Zoning Ordinance of the City of Atlanta, entitled, "Conditional Development", as identified by the use of the suffice "C" after the district designation in Section 1 above, the Director, Bureau of Buildings, shall issue a building permit for the development of the above-described property only in compliance with the attached conditions. Any conditions hereby approved (including any conditional site plan) do not authorize the violation of any district regulations. District regulation variances can be approved only by application to the Board of Zoning Adjustment.

SECTION 3. That the maps referred to, now on file in the Office of the Municipal Clerk, be changed to conform with the terms of this ordinance.

SECTION 4. That all ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby repealed.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

R. Dillon Baynes,

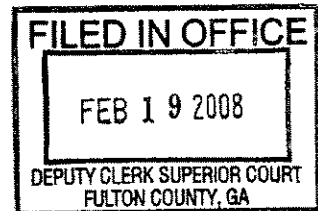
Plaintiff,

vs.

City of Atlanta,

Defendant.

CIVIL ACTION FILE
No. 2007CV127767



Consent Order of Remand

Plaintiff R. Dillon Baynes ("Baynes") and Defendant City of Atlanta ("City"), by and through their undersigned counsel, respectfully request this Honorable Court to enter this Consent Order remanding the question of rezoning the Property to the Atlanta City Council immediately upon the entry of said Order. In support, the parties state as follows.

1.

Baynes filed the Complaint in this case on January 3, 2007, alleging various violations of his constitutional rights arising out of the refusal of the City to rezone his property located at 987 Myrtle Street NE, Atlanta, Fulton County Georgia (the "Property") from R-5 to RG-3.

2.

Baynes contends that the existing R-5 zoning of the Property is unconstitutional. For purposes of this Consent Order, the City agrees that greater density could be allowed on the Property based on its classification in the Comprehensive Development Plan such that the R-5 zoning of the Property might be found unconstitutional, in the event that

the matter is tried.

3.

In order to avoid the uncertainties which may result from the litigation of this matter, the parties agree to remand the issue of whether RG-3 zoning is appropriate to the City Council.

4.

Immediately upon the entry of this Order, the City agrees to again process the existing denied application (the "Application") as if it had been filed on the date of the Order. No additional permit fee shall be charged. The City agrees not to present any other zoning category as an alternative to RG-3.

5.

The Bureau of Planning will submit a Staff Report in support of the rezoning to RG-3, recommending approval, reflecting the same sum and substance as that which was contained in the Staff Report prepared for the original application for rezoning as submitted by Baynes, provided that Baynes does not substantially amend the Application.

6.

The Application will proceed through the normal course for a rezoning application, pursuant to the City Zoning Code, including a public hearing before the Zoning Review Board and a vote of the City Council.

7.

The Application shall be processed without undue delay on the part of the City.

8.

The Application shall be referred to the affected neighborhood planning unit(s)

immediately upon filing. The failure of any affected neighborhood planning unit to offer a recommendation on the Application at the next NPU meeting after the date of receipt shall result in a report by the City to the Zoning Committee of "no recommendation by the NPU." The public hearing shall be scheduled for the next meeting of the Zoning Review Board following the time set forth for NPU consideration, provided however that the City shall be allowed sufficient time to meet the advertising requirements of the Zoning Procedures Law. Consideration of the Application shall not be deferred by the City for any reason other than a request by Baynes. If a final vote of the City Council has not occurred within 90 days of Application, Baynes may request intervention by the Court. At that time, absent a compelling reason for the delay, the Court may find the City in contempt of this Order.

9.

The Application shall not be amended from the RG-3 category although reasonable conditions may be included. This stipulation does not bar litigation on the constitutionality of any conditions to which Plaintiff has not consented.

10.

Should the City rezone the Property to RG-3, as requested, without objectionable conditions, Baynes acknowledges that the rezoning of the Property to RG-3 does not guarantee that he or his successors will be permitted to develop the Property in any way other than as expressly contemplated by the zoning conditions of this zoning district. Should the requested zoning be approved, Baynes would still have to proceed through those normal and customary steps required by the Zoning Code to secure the permits and approvals necessary to develop the Property. The Property will still be bound by the requirements of the City of Atlanta Zoning Code, including without limitation,

transitional height planes, open space, setbacks, or parking, except in accordance with the procedures set forth therein.

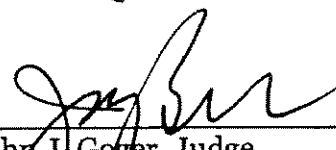
11.

Should the City fail to rezone the Property to RG-3 or adopt conditions on a rezoning to RG-3 that are unreasonable or overly restrictive, Baynes may return to this Court for consideration of the constitutionality of the existing R-5 zoning, any new zoning which is not RG-3, or the constitutionality of the conditions on the RG-3 zoning. Baynes may file an amended complaint challenging the constitutionality of the new zoning or any conditions to RG-3 without having to file a new action and/or seek other relief.

12.

Each party to bear its own costs and attorneys' fees in this case.

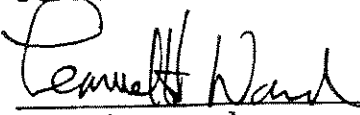
SO ORDERED this 14 day of February 2008.



John J. Goger, Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

Stipulated and agreed to, this 12 day of FEB, 2008.

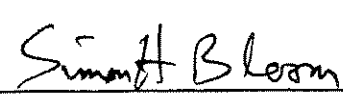
For Defendant



Lemuel H. Ward
Senior Assistant City Attorney
Georgia Bar No. 737030

City of Atlanta Law Department
68 Mitchell Street, S.W. Suite 4100
Atlanta, Georgia 30335
404-330-6400

For Plaintiff



Simon H. Bloom (BY L.H. WARD)
Ga. Bar No. 064298
(w) EXPRESS PERMISSION

The Bloom Law Firm
100 Peachtree Street, Suite 2140
Atlanta, Georgia 30303
404-577-7710

FILED IN OFFICE
FEB 19 2008
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

CIVIL ACTION FILE
No. 2007CV127767

Distribution:
Simon H. Bloom
Lemuel H. Ward

City Council
Atlanta, Georgia

06-0-1797

AN ORDINANCE
BY: ZONING COMMITTEE

Z-06-79
Date Filed: 7-10-06

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1. That the Zoning Ordinance of the City of Atlanta be amended, and the maps established in connection therewith be changed so that the following property located at **987 Myrtle Street, N.E.**, be changed from R-5 (Two-family Residential) District to the RG-3 (Residential General-Sector 3) District,, to wit:

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SECTION 2. If this amendment is approved under the provisions of Section 16-02.003 of the Zoning Ordinance of the City of Atlanta, entitled, "Conditional Development", as identified by the use of the suffice "C" after the district designation in Section 1 above, the Director, Bureau of Buildings, shall issue a building permit for the development of the above-described property only in compliance with the attached conditions. Any conditions hereby approved (including any conditional site plan) do not authorize the violation of any district regulations. District regulation variances can be approved only by application to the Board of Zoning Adjustment.

SECTION 3. That the maps referred to, now on file in the Office of the Municipal Clerk, be changed to conform with the terms of this ordinance.

SECTION 4. That all ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby repealed.

Legal Description

987 Myrtle Street NE

All that tract or parcel of land lying and being in land lot 106, district 17, Fulton County, Georgia, being more particularly described as follows:

Beginning at an iron pin located at the intersection of the Eastern right of way of Myrtle Street and the southern right of way of Tenth Street, Thence running south 89 degrees 35 minutes east 160 feet to an iron pin, thence running south 0 degrees 25 minutes west 45.05 feet to an iron pin; thence running south 89 degrees 54 minutes west 168 feet to a rock column; thence running north 0 degrees 24 minutes east 46.5 feet to the point of beginning; being improved property known as 987 Myrtle Street according to the present system of numbering in Fulton County, Georgia.



Z-06-79

06-0 -1797

(Do Not Write Above This Line)

AN ORDINANCE Z-06-79
BY: ZONING COMMITTEE

An Ordinance to rezone from the R-5 (Two-family Residential) District to the RG-3 (Residential General-Sector 3) District, property located at 987 Myrtle Street, N.E., fronting approximately 45.57 feet on the east side of Myrtle Street. Depth: approximately 167 feet. Area: approximately 0.17 acres. Land Lot 106, 17th District, Fulton County, Georgia.

OWNER: DILLON BAYNES
APPLICANT: DILLON BAYNES
NPU-E
COUNCIL DISTRICT 6

Adversed
By Council
12/04/06

- ☐ CONSENT REFER
☒ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER
☐ PERSONAL PAPER REFER

Date Referred 8/21/06
Referred To: ZRB+ Zoning
Date Referred
Referred To:
Date Referred
Referred To:

First Reading

Committee Zoning
Date August 16, 2006
Chair
Referred To ZRB+ Zoning

Committee
Date 8/29/2006
Chair
Action
Fav, Adv, Hold (see rev. side)
Other

Members
Refer To

Committee
Date
Chair
Action
Fav, Adv, Hold (see rev. side)
Other

Members
Refer To

Committee
Date
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Action
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Action
Fav, Adv, Hold (see rev. side)
Other

FINAL COUNCIL ACTION

- ☐ 2nd ☐ 1st & 2nd ☐ 3rd
☐ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

DEC 04 2006

CERTIFIED
DEC 04 2006
Municipal Clerk

MAYOR'S ACTION

RCS# 773
12/04/06
5:46 PM

Atlanta City Council

REGULAR SESSION

MULTIPLE

06-O-1797, 06-O-2262

ADVERSE

YEAS: 10
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 3
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Hall	Y Fauver	Y Martin	NV Norwood
Y Young	Y Shook	E Maddox	NV Willis
Y Winslow	E Muller	E Sheperd	NV Borders

MULTIPLE